

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**TONYA THORNTON, MICHAEL
THORNTON, INDIVIDUALLY and as
NEXT FRIENDS of MEGAN
THORNTON, MORGAN THORNTON,
and MEGAN WILLIAMS, and TONYA
THORNTON as REPRESENTATIVE of
the ESTATES of SYNDEE and SIERRA
THORNTON, DECEASED,**

C.A. 1:04cv1039-LY

Plaintiffs,

VS.

HOME DEPOT U.S.A., INC., ET AL.,

Defendants.

AGREED MOTION TO DISMISS WITH PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs Tonya Thornton, Michael Thornton, Individually and as Next Friends of Morgan Thornton; Meagan Williams; and Tonya Thornton, as Representative of the Estates of Syndee and Sierra Thornton, Deceased; Defendant Home Depot U.S.A., Inc.; and Third-Party Defendants Cheyenne Industries, Inc. and Catalina Lighting, move this Honorable Court to enter an Order to Dismiss pursuant to FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1), dismissing all claims filed by the parties in their entirety, with prejudice as to the re-filing of same, and in support thereof states the following:

The parties to this Motion agree to the relief sought in this Motion pursuant to an agreement between Plaintiffs, Defendant, and Third-Party Defendants as to the final resolution of all claims.

Third-Party Defendant Cheyenne Industries, Inc. agrees to pay all fees and expenses of Oskar

Nisimblat, appointed guardian ad litem for Morgan Thornton, a minor child. All other costs will be borne by the party incurring same.

WHEREFORE, Plaintiffs Tonya Thornton, Michael Thornton, Individually and as Next Friends of Morgan Thornton; Meagan Williams; and Tonya Thornton, as Representative of the Estates of Syndee and Sierra Thornton, Deceased, Defendant Home Depot U.S.A., Inc.; and Third-Party Defendants Cheyenne Industries, Inc. and Catalina Lighting respectfully request this Honorable Court enter an Order to Dismiss all claims filed by the parties in their entirety pursuant to FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1), with prejudice as to the re-filing of same; that Third-Party Defendant Cheyenne Industries, Inc. be ordered to pay all fees and expenses of Oskar Nisimblat, appointed guardian ad litem for Morgan Thornton, a minor child; and that all other costs be borne by the party incurring same.

Respectfully submitted,

BROWN SIMS, P.C.

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